IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3805 (S/S) of 2001

(Old No. 14430 of 1997)

S.P. Kotnala .... Petitioner

Versus

Union of India through Secretary,
Ministry of Defence, New Dehli
And two others .... Respondnets

.....

Hon'ble P.C.Verma, J.

This petition has been filed by the petitioner seeking writ of mandamus to command the respondents to pay disability pension to him as his both the eyes were injured on account of the bursting out of the rifle due to its mechanical defect while he was in service. After receipt of the injury, petitioner went under treatment. Firstly his left eye was operated in the year 1989 and thereafter after six months his right eye was operated. The petitioner appeared before the Medical Board. The Medical Board assessed the disability of the petitioner at 40%. Accordingly, he was medically downgraded. The petitioner has been prematurely retired on account of this disability on 31.12.1992. Regulation 173 and sub clause (3) & (4) of Regulation 173 of Pension Regulations for the Army deals with the disability pension which reads as under:-

"173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Military service and is assessed at 20 per cent or over."

"3. There must be a casual connection between disablement and military service for attributability or aggravation to be conceded."

"4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases."

A counter affidavit has been filed, in which it has been stated that the disability cannot be attributed to military service. By impugned order the disability pension has been refused on the ground that the disability was not attributed or aggrevated to the military service. In Para-3 of the counter affidavit it has also been admitted that the petitioner was downgraded. The factum of hospitalization due to injury in the eyes and operation of the eyes have not been disputed. The time of the incident has also not been disputed. Therefore, the order by which the disability pension has been refused cannot be sustained in view of the provision contained under Regulation 173 of Pension Regulations for the Army in the facts and circumstances of the case.

For the reasons stated above, the petition is allowed. Writ of certiorari is issued and the impugned orders dated 30.4.1996 rejecting appeal of the petitioner are queshed. Petitioner will be entitled to the payment of disabilitiy pension including arrears thereof with interest at the rate of 8% (eight per cent) per annum.

10.09.2003

P.Singh

P.C.Verma,J.